

SENATE BILL NO. 368

INTRODUCED BY DOHERTY, YELLOWTAIL, TOOLE, HARPER,  
LYNCH, REAM, DRISCOLL, RANEY, HALLIGAN, D. BROWN,  
GALVIN, BARDANOUE, RUSSELL, HARRINGTON, BROOKE,  
VAN VALKENBURG, CHRISTIAENS, PECK, RYAN, DOWELL,  
MENAHAN, SWANSON, WANZENRIED, WHALEN, KADAS,  
MCCARTHY, BARNHART, DOLEZAL, NATHE, MCCULLOCH,  
STRIZICH, FRANKLIN, SCHWINDEN, L. NELSON, STOVALL,  
SQUIRES, BLAYLOCK

IN THE SENATE

FEBRUARY 11, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 20, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 22, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
	ENGROSSING REPORT.
FEBRUARY 23, 1993	THIRD READING, PASSED. AYES, 40; NOES, 9.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 26, 1993	COMMITTEE RECOMMEND BILL BE NOT CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 29, 1993	RETURNED TO SENATE WITH AMENDMENTS.
APRIL 19, 1993	ON MOTION, PREVIOUS ACTION RECONSIDERED.

IN THE SENATE

APRIL 19, 1993

ON MOTION, RETURNED TO HOUSE.

IN THE HOUSE

APRIL 19, 1993

ON MOTION, RULES SUSPENDED TO ALLOW  
SECOND AND THIRD READING AND  
TRANSMITTAL ON THIS DAY.

SECOND READING, CONCURRED IN AS  
AMENDED.

THIRD READING, CONCURRED IN.  
AYES, 96; NOES, 3.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 20, 1993

ON MOTION, RULES SUSPENDED TO PLACE ON  
SECOND AND THIRD READING THIS DAY.

SECOND READING, AMENDMENTS  
CONCURRED IN.

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 368  
2 INTRODUCED BY Dan G. McInnis  
3 Republican Party  
4 A BILL FOR AN ACT ENTITLED: "AN ACT AGREEING TO THE PARTIAL WITHDRAWAL OF THE CONSENT OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES TO PUBLIC LAW 290 JURISDICTION ON THE FLATHEAD RESERVATION; AMENDING SECTION 2-1-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
5  
6  
7  
8  
9

10 WHEREAS, Public Law 280 was enacted by Congress in 1953  
11 during the era of federal Indian policy that was directed at  
12 terminating the historical federal trust relationship owed  
13 to Indian tribes and at assimilating Indians into the  
14 mainstream; and

15 WHEREAS, in an effort to further the federal termination  
16 policy, in 1963, the Montana Legislature enacted Public Law  
17 280 enabling legislation in order to allow consenting  
18 Montana tribes to subject their members to limited,  
19 concurrent state jurisdiction pursuant to Public Law 280;  
20 and

21 WHEREAS, by enacting Tribal Ordinance 40-A (revised) in  
22 1965, the Confederated Salish and Kootenai Tribes, the only  
23 Montana tribal government to consent to Public Law 280  
24 jurisdiction, agreed to subject its members to state  
25 concurrent adjudicatory jurisdiction over criminal conduct

1 and the following eight areas of civil law: compulsory  
2 school attendance; public welfare; domestic relations  
3 (except adoption); care of the infirm, aged, and afflicted;  
4 juvenile delinquency and youth rehabilitation; adoption  
5 proceedings with consent of the Tribal Court; abandoned,  
6 dependent, neglected, orphaned, or abused children; and  
7 operation of motor vehicles upon the public streets, alleys,  
8 roads, and highways; and

9 WHEREAS, the Confederated Salish and Kootenai Tribes  
10 consented to limited state concurrent jurisdiction in 1965  
11 because the total tribal budget was less than \$250,000, and  
12 the tribal government, with only 11 employees, could not  
13 afford adequate law enforcement and other social services;  
14 and

15 WHEREAS, since 1965, the size and capabilities of the  
16 Confederated Salish and Kootenai tribal government have  
17 grown considerably, and today the tribal government employs  
18 more than 1,200 persons, manages an operating budget of  
19 approximately \$70 million, including federally contracted  
20 programs, and oversees one of the largest tribal law  
21 enforcement and tribal justice systems in the state and  
22 nation; and

23 WHEREAS, since 1970, all branches of the federal  
24 government and every American president has officially  
25 embraced the policy of encouraging tribal

self-determination, and pursuant to that encouragement, approximately 30 Indian tribes across the United States have withdrawn from Public Law 280 jurisdiction; and

WHEREAS, the Montana Legislature recognizes and supports federal policy encouraging self-determination for Indian tribal governments in Montana and across the United States and recognizes the current capability and resources of the Confederated Salish and Kootenai Tribes to reassume jurisdiction over its members; and

WHEREAS, to further tribal self-determination, Congress preempted Public Law 280 jurisdiction in the area of Indian child welfare by enacting the Indian Child Welfare Act in 1978, which recognized tribal court primacy over the adoption of Indian children; and

WHEREAS, the Confederated Salish and Kootenai Tribes now seeks state agreement to the withdrawal of tribal consent to and the partial retrocession of the Tribes from Public Law 280 jurisdiction; and

WHEREAS, the Confederated Salish and Kootenai Tribes believes that resumption of jurisdiction by the Tribes should be implemented through a phasein approach to ensure a smooth transition.

THEREFORE, the Legislature of the State of Montana finds it appropriate to agree to the resumption by the Confederated Salish and Kootenai Tribes of exclusive

adjudicatory jurisdiction in the named areas of civil jurisdiction and in misdemeanor types of crimes and to endorse a phased-in approach to provide an orderly resumption of jurisdiction by the Tribes over its members.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 2-1-306, MCA, is amended to read:

"2-1-306. Withdrawal of consent to state jurisdiction.

(1) Any Indian tribe, community, band, or group of Indians that may consent to come within the provisions of this part may within--2--years--from--the--date--of--the---governor's proclamation withdraw their its consent to be subject to the criminal and/or or civil jurisdiction of the state of Montana, by appropriate resolution, and within 60--days 1 year after receipt of such the resolution, the governor shall issue a proclamation to that effect.

(2) The withdrawal of tribal consent by the Confederated Salish and Kootenai tribes from Public Law 280 jurisdiction on the Flathead Indian reservation is limited:

(a) in criminal jurisdiction, to exclusive tribal resumption of all misdemeanor crimes and those felonies that the tribal government and the governor, after consultation with the attorney general, agree upon in writing. Resumption of criminal jurisdiction does not include those crimes enumerated in the Indian Major Crimes Act, as amended, 18

1 U.S.C. 1153, or crimes in which the defendant is not an  
2 Indian, as defined in 25 U.S.C. 1301.

3 (b) in civil jurisdiction, to tribal resumption of  
4 those civil areas delineated in tribal ordinance 40-A  
5 (revised) on which the tribal government and the governor  
6 agree."

7 NEW SECTION. Section 2. Effective date. [This act] is  
8 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0368, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act agreeing to the partial withdrawal of the consent of the Confederated Salish and Kootenai tribes to Public Law 280 jurisdiction on the Flathead Reservation.

ASSUMPTIONS:

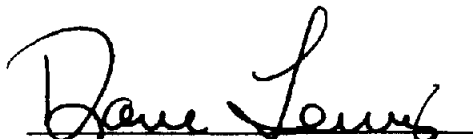
1. It is assumed that the additional workload imposed upon the Attorney General's staff and potential travel expenses can be absorbed within the current level budget for the Department of Justice.


FISCAL IMPACT:

None.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The bill provides the potential for some reduced county law enforcement responsibilities in impacted areas.

 2-17-93  
DAVE LEWIS, BUDGET DIRECTOR                      DATE  
Office of Budget and Program Planning

 2/17/93  
STEVE DOHERTY, PRIMARY SPONSOR                      DATE  
Fiscal Note for SB0368, as introduced  
SB 368

APPROVED BY COMMITTEE  
ON JUDICIARY

BILL NO. 368

INTRODUCED BY

A BILL FOR AN ACT ENTITLED:

"AN ACT AGREEING TO THE PARTIAL

WITHDRAWAL OF THE CONSENT OF THE CONFEDERATED SALISH AND

KOOTENAI TRIBES TO PUBLIC LAW 280 JURISDICTION ON THE

FLATHEAD RESERVATION; AMENDING SECTION 12-1-306, MCA; AND

PROVIDING AN IMMEDIATE EFFECTIVE DATE." *Blair*

WHEREAS, Public Law 280 was enacted by Congress in 1953 during the era of federal Indian policy that was directed at terminating the historical federal trust relationship owed to Indian tribes and at assimilating Indians into the mainstream; and

WHEREAS, in an effort to further the federal termination policy, in 1963, the Montana Legislature enacted Public Law 280 enabling legislation in order to allow consenting Montana tribes to subject their members to limited, concurrent state jurisdiction pursuant to Public Law 280; and

WHEREAS, by enacting Tribal Ordinance 40-A (revised) in 1965, the Confederated Salish and Kootenai Tribes, the only Montana tribal government to consent to Public Law 280 jurisdiction, agreed to subject its members to state concurrent adjudicatory jurisdiction over criminal conduct

and the following eight areas of civil law: compulsory school attendance; public welfare; domestic relations (except adoption); care of the infirm, aged, and afflicted; juvenile delinquency and youth rehabilitation; adoption proceedings with consent of the Tribal Court; abandoned, dependent, neglected, orphaned, or abused children; and operation of motor vehicles upon the public streets, alleys, roads, and highways; and

WHEREAS, the Confederated Salish and Kootenai Tribes consented to limited state concurrent jurisdiction in 1965 because the total tribal budget was less than \$250,000, and the tribal government, with only 11 employees, could not afford adequate law enforcement and other social services; and

WHEREAS, since 1965, the size and capabilities of the Confederated Salish and Kootenai tribal government have grown considerably, and today the tribal government employs more than 1,200 persons, manages an operating budget of approximately \$70 million, including federally contracted programs, and oversees one of the largest tribal law enforcement and tribal justice systems in the state and nation; and

WHEREAS, since 1970, all branches of the federal government and every American president has officially embraced the policy of encouraging tribal

self-determination, and pursuant to that encouragement, approximately 30 Indian tribes across the United States have withdrawn from Public Law 280 jurisdiction; and

WHEREAS, the Montana Legislature recognizes and supports federal policy encouraging self-determination for Indian tribal governments in Montana and across the United States and recognizes the current capability and resources of the Confederated Salish and Kootenai Tribes to reassume jurisdiction over its members; and

WHEREAS, to further tribal self-determination, Congress preempted Public Law 280 jurisdiction in the area of Indian child welfare by enacting the Indian Child Welfare Act in 1978, which recognized tribal court primacy over the adoption of Indian children; and

WHEREAS, the Confederated Salish and Kootenai Tribes now seeks state agreement to the withdrawal of tribal consent to and the partial retrocession of the Tribes from Public Law 280 jurisdiction; and

WHEREAS, the Confederated Salish and Kootenai Tribes believes that resumption of jurisdiction by the Tribes should be implemented through a phased approach to ensure a smooth transition.

THEREFORE, the Legislature of the State of Montana finds it appropriate to agree to the resumption by the Confederated Salish and Kootenai Tribes of exclusive

adjudicatory jurisdiction in the named areas of civil jurisdiction and in misdemeanor types of crimes and to endorse a phased-in approach to provide an orderly resumption of jurisdiction by the Tribes over its members.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 2-1-306, MCA, is amended to read:

"2-1-306. Withdrawal of consent to state jurisdiction.

(1) Any Indian tribe, community, band, or group of Indians that may consent to come within the provisions of this part may within ~~two~~ years from the date of the governor's proclamation withdraw their its consent to be subject to the criminal and/or or civil jurisdiction of the state of Montana, by appropriate resolution, and within ~~60~~ days 1 year after receipt of such the resolution, the governor shall issue a proclamation to that effect.

(2) The withdrawal of tribal consent by the Confederated Salish and Kootenai tribes from Public Law 280 jurisdiction on the Flathead Indian reservation is limited:

(a) in criminal jurisdiction, to exclusive tribal resumption of all misdemeanor crimes and those felonies that the tribal government and the governor, after consultation with the attorney general, agree upon in writing. Resumption of criminal jurisdiction does not include those crimes enumerated in the Indian Major Crimes Act, as amended, 18



1 U.S.C. 1153, or crimes in which the defendant is not an  
2 Indian, as defined in 25 U.S.C. 1301.

3 (b) in civil jurisdiction, to tribal resumption of  
4 those civil areas delineated in tribal ordinance 40-A  
5 (revised) on which the tribal government and the governor  
6 agree."

7 NEW SECTION. Section 2. Effective date. [This act] is  
8 effective on passage and approval.

-End-

1 Senate BILL NO. 368  
 2 INTRODUCED BY Senators: Yellowtail, Felt, Hap, Lynch  
 3 Seam, R. Brown, R. Kelly, E. Brown  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT AGREEING TO THE PARTIAL Whalen  
 5 WITHDRAWAL OF THE CONSENT OF THE CONFEDERATED SALISH AND Blaylock  
 6 KOOTENAI TRIBES TO PUBLIC LAW 280 JURISDICTION ON THE Stoll  
 7 FLATHEAD RESERVATION; AMENDING SECTION 2-1-306, MCA; AND  
 8 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10 WHEREAS, Public Law 280 was enacted by Congress in 1953  
 11 during the era of federal Indian policy that was directed at  
 12 terminating the historical federal trust relationship owed  
 13 to Indian tribes and at assimilating Indians into the  
 14 mainstream; and

15 WHEREAS, in an effort to further the federal termination  
 16 policy, in 1963, the Montana Legislature enacted Public Law  
 17 280 enabling legislation in order to allow consenting  
 18 Montana tribes to subject their members to limited,  
 19 concurrent state jurisdiction pursuant to Public Law 280;  
 20 and

21 WHEREAS, by enacting Tribal Ordinance 40-A (revised) in  
 22 1965, the Confederated Salish and Kootenai Tribes, the only  
 23 Montana tribal government to consent to Public Law 280  
 24 jurisdiction, agreed to subject its members to state  
 25 concurrent adjudicatory jurisdiction over criminal conduct

1 and the following eight areas of civil law: compulsory  
 2 school attendance; public welfare; domestic relations  
 3 (except adoption); care of the infirm, aged, and afflicted;  
 4 juvenile delinquency and youth rehabilitation; adoption  
 5 proceedings with consent of the Tribal Court; abandoned,  
 6 dependent, neglected, orphaned, or abused children; and  
 7 operation of motor vehicles upon the public streets, alleys,  
 8 roads, and highways; and

9 WHEREAS, the Confederated Salish and Kootenai Tribes  
 10 consented to limited state concurrent jurisdiction in 1965  
 11 because the total tribal budget was less than \$250,000, and  
 12 the tribal government, with only 11 employees, could not  
 13 afford adequate law enforcement and other social services;  
 14 and

15 WHEREAS, since 1965, the size and capabilities of the  
 16 Confederated Salish and Kootenai tribal government have  
 17 grown considerably, and today the tribal government employs  
 18 more than 1,200 persons, manages an operating budget of  
 19 approximately \$70 million, including federally contracted  
 20 programs, and oversees one of the largest tribal law  
 21 enforcement and tribal justice systems in the state and  
 22 nation; and

23 WHEREAS, since 1970, all branches of the federal  
 24 government and every American president has officially  
 25 embraced the policy of encouraging tribal

self-determination, and pursuant to that encouragement, approximately 30 Indian tribes across the United States have withdrawn from Public Law 280 jurisdiction; and

WHEREAS, the Montana Legislature recognizes and supports federal policy encouraging self-determination for Indian tribal governments in Montana and across the United States and recognizes the current capability and resources of the Confederated Salish and Kootenai Tribes to reassume jurisdiction over its members; and

WHEREAS, to further tribal self-determination, Congress preempted Public Law 280 jurisdiction in the area of Indian child welfare by enacting the Indian Child Welfare Act in 1978, which recognized tribal court primacy over the adoption of Indian children; and

WHEREAS, the Confederated Salish and Kootenai Tribes now seeks state agreement to the withdrawal of tribal consent to and the partial retrocession of the Tribes from Public Law 280 jurisdiction; and

WHEREAS, the Confederated Salish and Kootenai Tribes believes that resumption of jurisdiction by the Tribes should be implemented through a phasein approach to ensure a smooth transition.

THEREFORE, the Legislature of the State of Montana finds it appropriate to agree to the resumption by the Confederated Salish and Kootenai Tribes of exclusive

adjudicatory jurisdiction in the named areas of civil jurisdiction and in misdemeanor types of crimes and to endorse a phased-in approach to provide an orderly resumption of jurisdiction by the Tribes over its members.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 2-1-306, MCA, is amended to read:

"2-1-306. Withdrawal of consent to state jurisdiction.

(1) Any Indian tribe, community, band, or group of Indians that may consent to come within the provisions of this part may within--2--years--from--the--date--of--the---governor's proclamation withdraw their its consent to be subject to the criminal and/or or civil jurisdiction of the state of Montana, by appropriate resolution, and within 60--days 1 year after receipt of such the resolution, the governor shall issue a proclamation to that effect.

(2) The withdrawal of tribal consent by the Confederated Salish and Kootenai tribes from Public Law 280 jurisdiction on the Flathead Indian reservation is limited:

(a) in criminal jurisdiction, to exclusive tribal resumption of all misdemeanor crimes and those felonies that the tribal government and the governor, after consultation with the attorney general, agree upon in writing. Resumption of criminal jurisdiction does not include those crimes enumerated in the Indian Major Crimes Act, as amended, 18

1 U.S.C. 1153, or crimes in which the defendant is not an  
2 Indian, as defined in 25 U.S.C. 1301.

3 (b) in civil jurisdiction, to tribal resumption of  
4 those civil areas delineated in tribal ordinance 40-A  
5 (revised) on which the tribal government and the governor  
6 agree."

7 NEW SECTION. Section 2. Effective date. [This act] is  
8 effective on passage and approval.

-End-

HOUSE STANDING COMMITTEE REPORT

March 25, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that  
Senate Bill 368 (third reading copy -- blue) be not concurred  
in as amended.

Signed: Russ Fagg  
Russ Fagg, Chair

And, that such amendment read:

1. Page 4, line 23.

Following: "writing."

Insert: "The governor shall confer with affected local  
governments and residents before issuing a proclamation."

2. Page 5, line 6.

Following: "agree."

Insert: "The governor shall confer with affected local  
governments and residents before issuing a proclamation."

-END-

SB 368

Committee Vote:  
Yes 18, No 18.

HOUSE  
671415SC.Hss  
3/25/93

#1

HOUSE COMMITTEE OF THE WHOLE AMENDMENT  
Senate Bill 368  
Representative Toole

April 19, 1993  
Page 2 of 2

April 19, 1993 11:47 am  
Page 1 of 2

Mr. Chairman: I move to amend Senate Bill 368 (third reading copy -- blue).

Signed: 

Representative Toole

And, that such amendments to Senate Bill 368 read as follows:

1. Title, line 4.

Strike: "AGREEING TO"

Insert: "PROVIDING FOR"

2. Page 1, line 10 through page 4, line 4.

Strike: preamble in its entirety

Insert: "WHEREAS, the Confederated Salish and Kootenai Tribes seek state approval to withdraw tribal consent and to partially retrocede from Public Law 280 jurisdiction on the Flathead Reservation in certain defined areas; and WHEREAS, the State of Montana finds it appropriate at this time to consent to the resumption by the Confederated Salish and Kootenai Tribes of jurisdiction in those areas specifically provided for in this legislation.

THEREFORE, the Legislature of the State of Montana does hereby adopt this legislation to approve partial retrocession by the Confederated Salish and Kootenai Tribes."

3. Page 4, line 9 through page 5, line 6.

Strike: subsections (1) and (2) in their entirety

Insert: "(1) No sooner than 6 months after [the effective date of this act] and after consulting with local government officials concerning implementation, the Confederated Salish and Kootenai tribes may, by tribal resolution, withdraw consent to be subject to the criminal misdemeanor jurisdiction of the state of Montana. Within 6 months after receipt of the resolution, the governor shall issue a proclamation to that effect.

(2) The Confederated Salish and Kootenai tribes may, by separate resolution, withdraw consent to be subject to those areas of civil jurisdiction of the state of Montana that are delineated in tribal ordinance 40-A (revised and enacted May 5, 1965). The withdrawal is limited to those delineated areas of

civil jurisdiction agreed upon in writing by the governor after consultation with the attorney general and officials of affected local governments. The tribes shall initiate this process by sending a certified letter to the governor. After consultation and execution of a written agreement between the governor and the tribes, the agreed-upon civil areas must be incorporated into a tribal resolution to be enacted by the tribes. Within 6 months after receipt of the tribal resolution, the governor shall issue a proclamation to that effect that reflects the terms of the written agreement.

(3) Subsections (1) and (2) do not alter the existing jurisdiction or authority of the Confederated Salish and Kootenai tribes or the state of Montana, except as expressly provided for in subsections (1) and (2)."

-END-

ADOPT

REJECT

sb 368.1  
861146CW.Hpf

SB 368  
HOUSE

## SENATE BILL NO. 368

INTRODUCED BY DOHERTY, YELLOWTAIL, TOOLE, HARPER,  
 LYNCH, REAM, DRISCOLL, RANEY, HALLIGAN, D. BROWN,  
 GALVIN, BARDANOUVE, RUSSELL, HARRINGTON, BROOKE,  
 VAN VALKENBURG, CHRISTIAENS, PECK, RYAN, DOWELL,  
 MENAHAN, SWANSON, WANZENRIED, WHALEN, KADAS,  
 MCCARTHY, BARNHART, DOLEZAL, NATHE, MCCULLOCH,  
 STRIZICH, FRANKLIN, SCHWINDEN, L. NELSON, STOVALL,  
 SQUIRES, BLAYLOCK

A BILL FOR AN ACT ENTITLED: "AN ACT ~~AGREING--TO~~ PROVIDING  
~~FOR~~ THE PARTIAL WITHDRAWAL OF THE CONSENT OF THE  
 CONFEDERATED SALISH AND KOOTENAI TRIBES TO PUBLIC LAW 280  
 JURISDICTION ON THE FLATHEAD RESERVATION; AMENDING SECTION  
 2-1-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, Public Law 280 was enacted by Congress in 1953  
 during the era of federal Indian policy that was directed at  
 terminating the historical federal trust relationship owed  
 to Indian tribes and at assimilating Indians into the  
 mainstream; and

WHEREAS, in an effort to further the federal termination  
 policy, in 1963, the Montana legislature enacted Public Law  
 280 enabling legislation in order to allow consenting  
 Montana tribes to subject their members to limited

concurrent state jurisdiction pursuant to Public Law 280,  
 and

WHEREAS, by enacting Tribal Ordinance 40-A (revised) in  
 1965, the Confederated Salish and Kootenai Tribes, the only  
 Montana tribal government to consent to Public Law 280  
 jurisdiction, agreed to subject its members to state  
 concurrent adjudicatory jurisdiction over criminal conduct  
 and the following eight areas of civil law: compulsory  
 school attendance; public welfare; domestic relations  
 (except adoption); care of the infirm, aged, and afflicted;  
 juvenile delinquency and youth rehabilitation; adoption  
 proceedings with consent of the Tribal Court; abandoned,  
 dependent, neglected, orphaned, or abused children; and  
 operation of motor vehicles upon the public streets, alleys,  
 roads, and highways; and

WHEREAS, the Confederated Salish and Kootenai Tribes  
 consented to limited state concurrent jurisdiction in 1965  
 because the total tribal budget was less than \$250,000 and  
 the tribal government, with only 11 employees, could not  
 afford adequate law enforcement and other social services;  
 and

WHEREAS, since 1965, the size and capabilities of the  
 Confederated Salish and Kootenai tribal government have  
 grown considerably, and today the tribal government employs  
 more than 1,200 persons, manages an operating budget of

approximately 970 million, including federally contracted programs, and oversees one of the largest tribal law enforcement and tribal justice systems in the state and nation, and

WHEREAS, since 1970, all branches of the federal government and every American president has officially embraced the policy of encouraging tribal self-determination, and pursuant to that encouragement, approximately 30 Indian tribes across the United States have withdrawn from Public Law 280 jurisdiction, and

WHEREAS, the Montana Legislature recognizes and supports federal policy encouraging self-determination for Indian tribal governments in Montana and across the United States and recognizes the current capability and resources of the Confederated Salish and Kootenai Tribes to reassume jurisdiction over its members, and

WHEREAS, to further tribal self-determination, Congress preempted Public Law 280 jurisdiction in the area of Indian child welfare by enacting the Indian Child Welfare Act in 1978, which recognized tribal court primacy over the adoption of Indian children, and

WHEREAS, the Confederated Salish and Kootenai Tribes now seeks state agreement to the withdrawal of tribal consent to and the partial retrocession of the Tribes from Public Law 280 jurisdiction, and

WHEREAS, the Confederated Salish and Kootenai Tribes believes that resumption of jurisdiction by the Tribes should be implemented through a phased approach to ensure a smooth transition,

THEREFORE, the Legislature of the State of Montana finds it appropriate to agree to the resumption by the Confederated Salish and Kootenai Tribes of exclusive adjudicatory jurisdiction in the named areas of civil jurisdiction and in misdemeanor types of crimes and to endorse a phased in approach to provide an orderly resumption of jurisdiction by the Tribes over its members,

WHEREAS, THE CONFEDERATED SALISH AND KOOTENAI TRIBES SEEK STATE APPROVAL TO WITHDRAW TRIBAL CONSENT AND TO PARTIALLY RETROCEDE FROM PUBLIC LAW 280 JURISDICTION ON THE FLATHEAD RESERVATION IN CERTAIN DEFINED AREAS; AND

WHEREAS, THE STATE OF MONTANA FINDS IT APPROPRIATE AT THIS TIME TO CONSENT TO THE RESUMPTION BY THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF JURISDICTION IN THOSE AREAS SPECIFICALLY PROVIDED FOR IN THIS LEGISLATION.

THEREFORE, THE LEGISLATURE OF THE STATE OF MONTANA DOES HEREBY ADOPT THIS LEGISLATION TO APPROVE PARTIAL RETROCESSION BY THE CONFEDERATED SALISH AND KOOTENAI TRIBES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 2-1-306, MCA, is amended to read:



1 "2-1-306. Withdrawal of consent to state jurisdiction.  
 2 ~~{1} Any Indian tribe, community, band, or group of Indians~~  
 3 ~~that may consent to come within the provisions of this part~~  
 4 ~~may within 2 years from the date of the governor's~~  
 5 ~~proclamation withdraw their its consent to be subject to the~~  
 6 ~~criminal and/or or civil jurisdiction of the state of~~  
 7 ~~Montana, by appropriate resolution, and within 60 days 1~~  
 8 ~~year after receipt of such the resolution, the governor~~  
 9 ~~shall issue a proclamation to that effect.~~

10 ~~{2} The withdrawal of tribal consent by the~~  
 11 ~~Confederated Salish and Kootenai tribes from Public Law 280~~  
 12 ~~jurisdiction on the Flathead Indian reservation is limited:~~

13 ~~{a} in criminal jurisdiction, to exclusive tribal~~  
 14 ~~resumption of all misdemeanor crimes and those felonies that~~  
 15 ~~the tribal government and the governor, after consultation~~  
 16 ~~with the attorney general, agree upon in writing. THE~~  
 17 ~~GOVERNOR SHALL CONFER WITH AFFECTED LOCAL GOVERNMENTS AND~~  
 18 ~~RESIDENTS BEFORE ISSUING A PROCLAMATION. Resumption of~~  
 19 ~~criminal jurisdiction does not include those crimes~~  
 20 ~~enumerated in the Indian Major Crimes Act, as amended, 18~~  
 21 ~~U.S.C. 1153, or crimes in which the defendant is not an~~  
 22 ~~Indian as defined in 25 U.S.C. 1301.~~

23 ~~{b} in civil jurisdiction, to tribal resumption of~~  
 24 ~~those civil areas delineated in tribal ordinance 40-A~~  
 25 ~~{revised} on which the tribal government and the governor~~

1 ~~agree. THE GOVERNOR SHALL CONFER WITH AFFECTED LOCAL~~  
 2 ~~GOVERNMENTS AND RESIDENTS BEFORE ISSUING A PROCLAMATION.~~  
 3 ~~{1} NO SOONER THAN 6 MONTHS AFTER [THE EFFECTIVE DATE OF~~  
 4 ~~THIS ACT] AND AFTER CONSULTING WITH LOCAL GOVERNMENT~~  
 5 ~~OFFICIALS CONCERNING IMPLEMENTATION, THE CONFEDERATED SALISH~~  
 6 ~~AND KOOTENAI TRIBES MAY, BY TRIBAL RESOLUTION, WITHDRAW~~  
 7 ~~CONSENT TO BE SUBJECT TO THE CRIMINAL MISDEMEANOR~~  
 8 ~~JURISDICTION OF THE STATE OF MONTANA. WITHIN 6 MONTHS AFTER~~  
 9 ~~RECEIPT OF THE RESOLUTION, THE GOVERNOR SHALL ISSUE A~~  
 10 ~~PROCLAMATION TO THAT EFFECT.~~

11 ~~{2} THE CONFEDERATED SALISH AND KOOTENAI TRIBES MAY, BY~~  
 12 ~~SEPARATE RESOLUTION, WITHDRAW CONSENT TO BE SUBJECT TO THOSE~~  
 13 ~~AREAS OF CIVIL JURISDICTION OF THE STATE OF MONTANA THAT ARE~~  
 14 ~~DELINEATED IN TRIBAL ORDINANCE 40-A (REVISED AND ENACTED MAY~~  
 15 ~~5, 1965). THE WITHDRAWAL IS LIMITED TO THOSE DELINEATED~~  
 16 ~~AREAS OF CIVIL JURISDICTION AGREED UPON IN WRITING BY THE~~  
 17 ~~GOVERNOR AFTER CONSULTATION WITH THE ATTORNEY GENERAL AND~~  
 18 ~~OFFICIALS OF AFFECTED LOCAL GOVERNMENTS. THE TRIBES SHALL~~  
 19 ~~INITIATE THIS PROCESS BY SENDING A CERTIFIED LETTER TO THE~~  
 20 ~~GOVERNOR. AFTER CONSULTATION AND EXECUTION OF A WRITTEN~~  
 21 ~~AGREEMENT BETWEEN THE GOVERNOR AND THE TRIBES, THE~~  
 22 ~~AGREED-UPON CIVIL AREAS MUST BE INCORPORATED INTO A TRIBAL~~  
 23 ~~RESOLUTION TO BE ENACTED BY THE TRIBES. WITHIN 6 MONTHS~~  
 24 ~~AFTER RECEIPT OF THE TRIBAL RESOLUTION, THE GOVERNOR SHALL~~  
 25 ~~ISSUE A PROCLAMATION TO THAT EFFECT THAT REFLECTS THE TERMS~~

1 OF THE WRITTEN AGREEMENT.

2 (3) SUBSECTIONS (1) AND (2) DO NOT ALTER THE EXISTING  
3 JURISDICTION OR AUTHORITY OF THE CONFEDERATED SALISH AND  
4 KOOTENAI TRIBES OR THE STATE OF MONTANA, EXCEPT AS EXPRESSLY  
5 PROVIDED FOR IN SUBSECTIONS (1) AND (2)."

6 NEW SECTION. Section 2. Effective date. [This act] is  
7 effective on passage and approval.

-End-